

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

KAYLA JEAN AYERS,	:	CASE NO. 5:20-cv-1654
	:	
Petitioner,	:	JUDGE SARA LIOI
	:	
v.	:	Magistrate Judge Carmen E. Henderson
	:	
DIRECTOR, OHIO DEPARTMENT	:	<u>RESPONDENT'S UNOPPOSED MOTION</u>
OF REHABILITATION &	:	<u>TO STAY ANSWER DEADLINE</u>
CORRECTION,	:	<u>UNTIL RULING ON PETITIONER'S</u>
	:	<u>PENDING MOTION TO STAY (Doc. 2)</u>
Respondent.	:	

Without opposition, Respondent Ohio Department of Rehabilitation & Correction (ODRC) Director moves the Court to stay ODRC Director's deadline to file an Answer and/or Return of Writ until after the Court rules on Habeas Petitioner Kayla Jean Ayers' pending motion for stay and abeyance to exhaust state court remedies. **(Motion, Doc. 2 PageID #53-57)** Opposing Counsel does not oppose ODRC Director's request to stay ODRC Director's deadline to answer, and there is good cause to stay ODRC Director's deadline to answer because the Court's ruling on Ayer's motion to stay is material to ODRC Director's Answer/Return of Writ.

The Court previously ordered ODRC Director to answer or otherwise respond to Ayers' habeas petition **(Petition, Doc. 1 PageID #2-16)** by October 30, 2020. **(Order, Doc. 6 PageID 69-70)** Meanwhile, Ayers filed a motion for stay and abeyance to exhaust state court remedies **(Motion, Doc. 2 PageID #53-57)**, ODRC Director filed an unopposed motion for leave to respond to the motion to stay instanter **(Motion, Doc. 8 PageID #73-74)** and a proposed response **(Proposed Response, Doc. 8-1 PageID #75-80)**, which are all currently pending before the Court.

ODRC Director previously filed an Amended unopposed motion for a time extension to answer until after the Court adjudicated Ayers' pending motion for stay and abeyance to exhaust state court remedies. (**Motion, Doc. 10 PageID #83-85**) The motion did not request a specific deadline date, however the ECF/CM electronic filing system required Undersigned Counsel to select a deadline date, and Undersigned Counsel randomly chose December 1, 2020 as a filing deadline based on a belief that Ayer's pending motion for stay might be adjudicated by December 1, 2020, and with the intention not to cause undue delay.

The Court subsequently granted ODRC Director's motion for a time extension to answer and extended ODRC Director's deadline to answer until December 1, 2020 (**Notation Order, Nov. 3, 2020**), however Ayer's motion for stay and abeyance to exhaust state court remedies (**Motion, Doc. 2 PageID #53-57**) is still pending.

The Court's resolution of Ayers' motion for stay and abeyance to exhaust state court remedies (**Motion, Doc. 2 PageID #53-57**) directly affects ODRC Director's response to Ayers' habeas petition and the contents of the state court record. Consequently, there is good cause to extend ODRC Director's deadline to answer Ayers' habeas petition until the Court adjudicates the motion to stay. If the Court stays this proceeding, there is good cause to further extend ODRC Director's response deadline until the stay is lifted because pending collateral state court proceedings will potentially be dispositive as to Ayers' federal habeas petition and/or the merits of ODRC Director's defenses.

Ayers will not be unduly prejudiced by a time extension because ODRC Director's first time extension motion requested the same unopposed remedy, Ayers

requested the stay and abeyance to exhaust state court remedies, and Ayers is challenging presumptively valid criminal convictions. *See Lee v. Jabe*, 989 F.2d 869, 871 (6th Cir. 1993); *State v. Rock*, 11th Dist. Lake No. 2016-L-011, 2016-Ohio-8516. Accordingly, undersigned Counsel contacted Opposing Counsel and Opposing Counsel does not oppose ODRC Director's request to stay the deadline to file an answer until after the Court's adjudicates Petitioner's motion for stay and abeyance to exhaust state court remedies. **(Motion, Doc. 2 PageID #53-57)**

Respectfully submitted,

Dave Yost  
Ohio Attorney General

s/Maura O'Neill Jaite  
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*Respondent's Attorney*

### **CERTIFICATE OF SERVICE**

On December 1, 2020, this Motion was electronically filed in the Court's CM/ECF system, which will distribute the notice to all parties and counsel of record.

s/Maura O'Neill Jaite  
Maura O'Neill Jaite  
Senior Assistant Attorney General